No. ~~744~~ 44

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

UNITED STATES OF AMERICA,
Appellant,
v.
INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO),
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

REPLY MEMORANDUM OF APPELLEE

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In its Brief in Opposition to Appellee's Motion to Affirm, the Government completely alters its attempted distinction of *United States* v. *CIO,* 335 U. S. 106. The Government had placed its sole emphasis in arguing before the District Court, and its major emphasis in its Statement as to Jurisdiction here, upon the difference between a union expressing its point of view on candidates to its members through a "house organ" and expressing its point of view on candidates to the general public and its members through a commercial television station. Now, in its Brief in Opposition to Appellee's Motion to Affirm, the Government relies for its distinction of the *CIO* case exclusively upon the argument that appellee is here charged with some unspecified

type of flagrant electioneering rather than with merely expressing its point of view on candidates. In other words, the Government has shifted its ground of distinction of the *CIO* case from the *means* of communication to the *contents* of the communication. This shift comes too late.

The fatal flaw in the Government's belated position is that it disregards the construction of the indictment by the District Court and asks this Court to construe the indictment *de novo*. The District Court's construction of the indictment as one charging appellee with payments to inform its members and the public of its position on candidates destroys the Government's newly-attempted distinction of the *CIO* case based on the difference in the contents of the union-sponsored statements in the two cases. On a direct appeal under the Criminal Appeals Act, the District Court's construction of the indictment is not open to examination by this Court. *United States* v. *Borden Co.*, 308 U. S. 188, 193; *United States* v. *Keitel*, 211 U. S. 370.

The indictment charges appellee with "urging and endorsing" the selection and election of Congressional candidates through televised expressions of political advocacy to the general public, as well as to members of the union. Appellee read the indictment, and so indicated in its brief in the court below, as charging the union with payments "to make known to its members and to the public its position on elections of significance to the union and its members" or, put another way, as charging the union with payments to present "its views on candidates to its members and the public through normal channels of communication" (Brief in Support of Defendant's Motion to Dismiss the Indictment, pp. 3, 27).

Neither at the informal oral hearing before District Judge Picard nor in its initial or reply briefs in the court below did the Government suggest that appellee's interpretation of the indictment was erroneous. Its efforts to avoid

the force of the *CIO* decision were not predicated upon the distinction it urges in this Court; rather the Government based its entire argument in the court below on the difference between expenditures for a union newspaper and a commercial television broadcast.

There being no dispute below on the meaning of the indictment, the District Court quite naturally construed it as alleging union expenditures "to inform its members and others of the position of the Union on those seeking federal offices" (Statement as to Jurisdiction, pp. 28-29). The District Judge referred to the *CIO* case, where this Court had described the indictment as charging the union with expenditures for "expressing views on candidates" (335 U.S. at p. 123), and stated that the "violations charged" in the *CIO* case were "the same charges as here" (Statement as to Jurisdiction, p. 28). Indeed, when the Government states that "the District Court failed to note that the allegations of this indictment would cover the latter [flagrant electioneering] type of broadcast",[1] all they are saying is that the District Court interpreted the indictment as charging contents of the communication in question similar to the contents of the communication in the *CIO* case. Whether the Government's interpretation of the indictment might have been accepted by the District Judge is immaterial here; it was not proposed to the District Judge and he interpreted the indictment as did appellee.

In summary, what happened here is that, in drafting the indictment and in its argument to the District Judge, the Government was relying for its distinction of the *CIO* case upon the difference between a payment by a union to inform its membership of its position through a union newspaper and a payment by a union to inform its membership and the public of its position through a commercial television channel. Now, the District Court having rejected this distinction and having followed the *CIO* case, the

[1] Brief in Opposition to Appellee's Motion to Affirm, p. 3.

Government has shifted away from its earlier distinction of the *CIO* case and is now urging that the indictment really charges appellee with some unspecified flagrant electioneering rather than seeking to inform its members and the public of its position on Congressional candidates. This shift, already stated, comes too late.

We respectfully urge the Court to grant appellee's Motion to affirm. An affirmance by this Court would do no more than apply the *CIO* case to a situation which Judge Augustus Hand, in the *Painters Local* case, described as "impossible, on principle, to differentiate" from the *CIO* case. An affirmance under the Criminal Appeals Act predicated upon the District Court's interpretation of the indictment would be no bar to any future indictment if the Government should ever discover the case it now conjures up of a union doing more than informing its members and the public of its position on candidates. Apparently the Government has been unable to locate such a case in the seven years since the *Painters Local* decision.

It is respectfully submitted that the Motion to Affirm should be granted.

Since the Court took no action on April 9, 1956 on the Government's Motion to Advance, it is assumed that the Motion to Advance is now moot.

Respectfully submitted,

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APRIL, 1956.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 36–44) is reported at 138 F. Supp. 53.

JURISDICTION

On February 8, 1956, the District Court for the Eastern District of Michigan entered an order dismissing the indictment on the ground that it did not charge offenses under 18 U. S. C. 610 (R. 45–46). On February 20, 1956, a notice of appeal to this Court was filed in the district court (R. 46–47), and on April 23, 1956, this Court entered an order noting probable jurisdiction (R. 47). 351 U. S. 904. The

jurisdiction of this Court to review on direct appeal an order dismissing an indictment before trial, based on a construction of the statute on which the indictment is founded, is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether an offense under 18 U. S. C. 610 is charged by an indictment alleging, *inter alia*, that on a specified date the defendant labor union made an expenditure of a specified sum from its general treasury fund to defray the expenses of a particular political television broadcast over a commercial television station, and that the broadcast was intended to influence the electorate generally to suport the election of certain candidates for federal offices.

STATUTE INVOLVED

18 U. S. C. 610 provides:

> It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing

offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, * * * in violation of this section, shall be fined not more than $1,000 or imprisonment not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

STATEMENT

On July 20, 1955, in the United States District Court for the Eastern District of Michigan, a four-count indictment was returned (R. 2–6) charging appellee, a labor organization, with four violations of 18 U. S. C. 610 by knowingly making expenditures from its general treasury funds in connection with a primary election held within the State of Michigan in 1954 to select candidates for Representatives in the

Congress of the United States (Count 1; R. 2–3) and in connection with a general election of a United States Senator and a Representative in Congress (Counts 2–4; R. 3–6).

Each count alleged the payment of a specified sum of money (ranging from $700 to $2,500) to a named company to defray the expenses of a political television broadcast, "urging and endorsing" the selection of particular candidates, over a named commercial television station in which the appellee union had no interest. It was alleged that the telecasts included expressions of political advocacy and were intended by appellee to influence the electorate generally, including voters who were not members of the appellee union, and to affect the results of the election. It was further alleged that the money expended was taken out of the general fund of the appellee and not from any other source, that this general fund consisted of union dues paid by members of the local unions belonging to and affiliated with appellee,[1] and that the expenditure was not made from voluntary political contributions or from subscriptions by appellee's members.

After entering a plea of not guilty to each count (R. 15), the appellee moved to dismiss the indictment on the grounds (1) that 18 U. S. C. 610 does not "prohibit payments by labor organizations to defray the expense of preparation for and telecasting of political television broadcasts urging and endorsing the selection and election of candidates for United States Senator and Representatives in the Congress of the

[1] Appellee is an international organization comprised of various union locals.

United States" (R. 18) and (2) that the provisions of 18 U. S. C. 610 "on their face and as construed and applied" are unconstitutional on various grounds (R. 18–19). The district court (per Picard, J.) after argument dismissed the indictment on February 8, 1956 (R. 45–46), having previously filed a memorandum opinion (R. 40–44) holding that "the 'expenditures' charged in this indictment are not expenditures prohibited by the Act" (R. 44). In its opinion, the court makes no attempt to construe affirmatively the disputed statutory terms, but instead relies on the principle of avoiding constitutional problems in construing a statute and on the application of that principle in *United States* v. *C. I. O.*, 335 U. S. 106.

SUMMARY OF ARGUMENT

I

A. 18 U. S. C. 610 prohibits unions and corporations from making "a contribution or expenditure in connection with" federal elections (including primaries). The district court dismissed, for failure to state an offense under 18 U. S. C. 610, an indictment which charges the expenditure of substantial sums of money out of general union funds to pay the expenses of certain television broadcasts intended to influence the public at large to support particular candidates in a federal election. By dismissing the indictment without consideration of the facts of this particular case, the district court's decision makes any distinctions between particular types of political broadcasting irrelevant. Since there is nothing on the

face of this indictment which describes the character of the broadcast, apart from the allegation that it urged and endorsed particular candidates and was intended to influence the electorate generally, and since the court's holding is not otherwise limited to any particular factual situation, its necessary implication is that *no* broadcast financed by a union on behalf of particular candidates can ever fall within the "expenditure" prohibition of the statute, regardless of the kind of electioneering involved.

B. The decision below is not supported by the language, purpose, or legislative history of the statute. Instead, the court relied principally on the interpretative canon that a court will endeavor to construe a statute to avoid serious doubts as to constitutionality. The decision, however, is not a construction of the statute at all in the sense of narrowing its application to any specified circumstances within the range of Congressional intent or limiting the holding to a particular factual situation alleged in the indictment. On the theory that any application of this indictment to any conceivable facts would involve a "speech" problem and thus present a constitutional issue, the court has left the term "expenditure" devoid of meaning, since all media of public communication for political campaigning involve some form of speech. Surely the principle of avoiding constitutional issues cannot be applied so broadly as to eliminate in practical effect a provision which, as we shall show, Congress deliberately inserted into the statute to cover at least some types of political expenditures.

The statute, as already noted, makes it unlawful for any labor organization (or corporation) to make an "expenditure in connection with any [federal] election." Obviously a political broadcast paid for out of general union funds, urging the general public to support particular candidates in a forthcoming federal election, comes within this literal language. In view of the crucial role of television in modern elections, such a broadcast is in every sense an indirect—and almost a direct—contribution to the political campaign of the candidates involved. At the very least, the "expenditure" provision must apply to union expenditures for outright electioneering to the general public via television, and such an act would be provable under this indictment.

This Court's opinion in *United States* v. *C. I. O.*, 335 U. S. 106, upon which the district court placed heavy reliance, does not support its position. In *C. I. O.*, the Court carefully limited its holding to the kind of expenditures charged by the indictment in that case—union expenditures for regular union newspapers distributed in regular course to union members. In doing so, the Court distinguished between statements of position addressed primarily to the union's own members through regular union channels, on the one hand, and active electioneering addressed to the public at large, on the other. The Court did not hold that no union expense involving a publication could be an "expenditure" under the statute; it expressly declined to do so. By contrast, the indictment in the instant case could reach situations which this Court in its *C. I. O.* opinion said

it was not reaching, *i. e.*, special electioneering activities.

The legislative history of Section 610 clearly shows that Congress intended the "expenditure" provision to cover union or corporate expenditures which are in the nature of indirect contributions to candidates in federal elections, *i. e.*, expenses which, though not tendered directly to the candidate, are expended for the special purpose of electioneering in his behalf. See *United States* v. *C. I. O.*, 335 U. S. 106, 115. And the Congressional debates preceding passage of this legislation demonstrate that the "expenditure" provision would cover such an indirect contribution as the purchase of radio time from general union funds for this purpose.

The district court erred, therefore, in dismissing the indictment without reference to any evidence which might be adduced on the trial of this case. Admittedly, under this law as under most laws of general application, there may be marginal instances where a line must be drawn between permissible and illegal political broadcasting with union moneys. But the possible existence of borderline cases does not render an indictment invalid where the general class of activities to which the statute is directed is plainly within the terms of the indictment. The kind of union electioneering which could be covered by this indictment comes within the general class of activities which Congress intended to forbid as indirect contributions to the campaign of a particular candidate in a particular election.

II

Although the district court did not pass on the constitutionality of the statute if applied to prohibit use of general union funds for political electioneering broadcasts on behalf of particular candidates, we believe it incumbent upon us to state the Government's position on this issue. We certainly do not presume to suggest, however, that the issue must necessarily be reached on this appeal. This Court has repeatedly emphasized that it will not decide constitutional questions unless necessary to a decision (*e. g., Peters* v. *Hobby,* 349 U. S. 331), that it will not decide constitutional questions in the abstract (*e. g., Rescue Army* v. *Municipal Court,* 331 U. S. 549), and that an appeal under the Criminal Appeals Act does not open up the whole case (*e. g., United States* v. *Borden Co.,* 308 U. S. 188, 193). Applying these principles to the instant case, the Court—if it finds that the indictment does state an offense under 18 U. S. C. 610—may deem it appropriate to remand the case to the district court for trial without passing on the constitutional question at this stage in the proceedings. See *United States* v. *Petrillo,* 332 U. S. 1, 10–12.

A. Should it be reached, however, any meaningful resolution of the issue involves a survey of the history of the political activities of unions in the nine years since the passage of the Taft-Hartley Act in 1947, which first imposed the prohibition on union "expenditures." This history, we submit, refutes the objection that the "expenditure" provision is a "complete prohibition" of the right of union majorities "to

make expenditures for directly and openly publicizing their political views and information supporting them"—the premise of the concurring opinion of Mr. Justice Rutledge in the *C. I. O.* case (335 U. S. at 145).

After enactment in 1947 of Section 304 of the Taft-Hartley Act—the predecessor of 18 U. S. C. 610—American labor unions intensified an already existing movement to develop political committees to represent labor in politics. These committees were organized to parallel all levels of union activity and each worked in close conjunction with its operative union organization. Since they were financed by voluntary contributions, they were not limited by 18 U. S. C. 610 in their political activities as to the "contributions" and "expenditures" they could make. With a not inconsiderable treasury of their own, they became a highly vocal representative of organized labor in every election since 1948. In December, 1955, following the merger of the largest part of American labor into the AFL-CIO, a vast new political organization known as the Committee on Political Education was created to operate as the political arm of the new fifteen-million-member group.

These voluntary political committees, moreover, are not the full measure of permissible union political activities. Following this Court's *C. I. O.* decision, which construed the "expenditure" provision as not covering expenditures for regular union publications containing political material distributed in normal course to the union membership, the unions made wide use of such union-financed publications to in-

struct individual unionists as to the union's official political views and endorsement. Other media have similarly been used for such "educational" purposes. The net effect of 18 U. S. C. 610 has been to prohibit only active electioneering to the public by unions with general funds on behalf of particular candidates.

B. In enacting what is now 18 U. S. C. 610, Congress was undoubtedly concerned with the danger to the elective process implicit in allowing labor unions to use compulsory levies for the purpose of financing political activities on behalf of their total membership, part of which might not subscribe to the political orthodoxy of the organization on all matters. For similar reasons, the prohibition was made applicable to corporations as well. Even if there were any real assurance that political representatives of union or corporate entities would accurately interpret a "majority" viewpoint to the public as to every political issue, the necessary individualism of the electoral process is eliminated unless, as under the present system, each participant is solicited on a voluntary basis and may withdraw his support when his own views do not coincide with the organization's position.

Under the forced-levy system, moreover, the political rights of union minorities are not protected, and they are in effect made, often under fear of loss of employment, to support through use of their funds political causes with which they cannot agree. The question is not simply whether majority rule should control union political action. Clear-cut choices are not in practice submitted to union memberships to be accepted or rejected. If unions were allowed to use

treasury funds for electioneering purposes, it is highly doubtful that the individual union member would be given any significant choice in its ultimate disposition.

While concededly a union as an entity has a legitimate interest in political affairs and a right to present its views, 18 U. S. C. 610, as construed by this Court in the *C. I. O.* case, allows it ample latitude to do so. It may communicate its viewpoint to its membership through regular union channels and in that way interpret for them the relationship between legitimate union interests and political campaigns. And union majorities may always speak effectively and accurately through voluntary political committees.

The danger of the political levy has been recognized by Great Britain, New South Wales, and Western Australia, which protect the rights of union minorities by legislation allowing dissidents the opportunity to withdraw from union-financed political activities. The present system in this country achieves the same effect, and in addition makes the voluntary political committees directly responsive to the will of the individual contributor whose continuing agreement represented by his continuing support must at all times be respected.

Moreover, even assuming *arguendo* that the official labor position on any given issue does reflect the will of the majority, the First Amendment does not entitle the majority to the financial support of the minority in putting across its political position to the public. It would be the very antithesis of the purpose of the First Amendment to hold that minorities *must* aid the propagation of the majority's views. The present

system, which preserves the ability of union majorities to take political action on a voluntary basis and the ability of the entity to make its official political position known to its membership, maintains a reasonable balance between the rights of the individual and of the group.

C. In the light of these considerations, 18 U. S. C. 610 is not an invalid restraint on group political expression within the condemnation of the First Amendment. Even the political activities of individuals have to some extent been limited in connection with elections and other governmental processes. *E. g., United States* v. *Harriss,* 347 U. S. 612. Certainly unions and corporations enjoy no First Amendment status superior to the rights of individuals who compose the group. Congress is not so impotent under the Constitution that it cannot place reasonable limitations on the power of such artificial entities to substitute money for the expression of popular will in federal elections.

ARGUMENT

The question presented by this appeal is whether the district court erred in dismissing the indictment for failure to charge an offense under 18 U. S. C. 610, *supra,* pp. 2–3. More specifically, because of the nature of the allegations of the indictment, the question presented is whether the "expenditure" provision of the statute applies to *any* political broadcast paid for by a union out of its general funds.

We shall undertake first to show that the "expenditure" provision does apply to a union's use of

its general funds at least for some types of political broadcasts in connection with a federal election. Then, since the decision below is apparently based in large part on the court's reluctance to pass on the constitutionality of Section 610 if applied to any expenditure of union funds for any political broadcasting to the general public, the Government's position on this constitutional question is stated in detail.

We do not presume to suggest, however, that the constitutional question must necessarily be reached on this appeal. This Court has repeatedly emphasized that it will not decide constitutional questions unless necessary to a decision (*e. g., Peters* v. *Hobby,* 349 U. S. 331), that it will not decide constitutional questions in the abstract (*e. g., Rescue Army* v. *Municipal Court,* 331 U. S. 549), and that an appeal under the Criminal Appeals Act does not open up the whole case (*e. g., United States* v. *Borden Co.,* 308 U. S. 188, 193). Applying these principles to the instant case, the Court—if it finds that the indictment does state an offense under 18 U. S. C. 610—may deem it appropriate to remand the case to the district court for trial without passing on the constitutional question at this stage of the proceedings. Compare *United States* v. *Petrillo,* 332 U. S. 1, 10–12. In the event of such a remand, an acquittal based on the proof presented would of course render the constitutional question moot for the purposes of this case, while a conviction would provide a concrete record for adjudication of the constitutional question and would in no way prejudice the appellee from again raising the issue.

I

THE DISTRICT COURT ERRED IN DISMISSING, FOR FAILURE TO STATE AN OFFENSE UNDER 18 U. S. C. 610, AN INDICTMENT CHARGING UNION EXPENDITURES FOR BROADCASTS INTENDED TO INFLUENCE THE PUBLIC TO SUPPORT PARTICULAR CANDIDATES IN A FEDERAL ELECTION

A. THE DECISION BELOW IS NECESSARILY A HOLDING THAT THE "EXPENDITURE" PROVISION DOES NOT APPLY TO ANY UNION-FINANCED BROADCAST

The district court has dismissed, for failure to state an offense under the statute, an indictment which charges the expenditure of substantial sums of money out of general union funds to pay the expense of commercial television broadcasts intended to influence the public at large to support the election of particular candidates in a federal election. Because of the general nature of these allegations, the court's decision necessarily implies a holding that the "expenditure" provision of 18 U. S. C. 610 does not apply to *any* broadcast paid for by a union out of its general funds, no matter what the amount expended or the kind of political advocacy involved or the role of the union's broadcasts in the candidate's campaign.

It would be entirely consistent with the allegations of this indictment to prove that the broadcasts were out-and-out electioneering speeches on behalf of the candidates involved. It would even be consistent with the allegations of this indictment if the proof showed that the union paid for a series of broadcasts which consisted only of the constant repetition of a slogan, such as "Vote for Mr. X, the union's friend." This would be, in the terms of the indictment, a broadcast "urging and endorsing" the election of a particular

candidate. But it would also be the use of general union funds for the active support of the political campaign of a particular candidate.

In its motion to affirm (p. 11), the appellee endeavors to interpret the decision below less broadly by pointing to the statement in the court's opinion that the purpose of appellee's expenditures was "to inform its members and others of the position of the Union on those seeking certain federal offices." This statement, however, does nothing to narrow the effect of the decision. Any political broadcast under the auspices of a union does, in the words of the district court, state the position of the union. Even spot announcements of the sort already suggested—"Vote for Mr. X, the union's friend"—perform that function. When, therefore, the court below dismissed the indictment without waiting for the specific nature of the broadcasts to be developed at the trial, the court necessarily did hold that *no* political broadcast by a union can fall within the "expenditure" provision of the statute. We can conceive of no union broadcast, no matter how aggressive or "political" the electioneering on behalf of particular candidates, which would not be within the scope of the court's ruling.

B. THE "EXPENDITURE" PROVISION, IN ITS NARROWEST POSSIBLE CONSTRUCTION, REACHES SOME BROADCASTS BY UNIONS ON BEHALF OF PARTICULAR CANDIDATES IN FEDERAL ELECTIONS

1. *Section 610 cannot be read to exclude from its purview all expenditures made from union treasuries for all political broadcasts*

18 U. S. C. 610, insofar as pertinent to the issues in this case, provides as follows:

> It is unlawful * * * for any corporation whatever, or any labor organization to make a contribution *or expenditure* in connection with any election at which Presidental or Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for * * *. [Emphasis added.]

Although the "expenditure" provision also governs corporations, its application to labor unions is principally in issue here.

There can be no doubt that the use of general union funds to finance a political broadcast, urging the publice at large to support particular candidates in a forthcoming federal election, is squarely within the literal language of the statute. It is also within the prime purpose of the "expenditure" provision—that is, to eliminate any question as to the applicability of the "contribution" provision where the subsidy is not paid directly to the candidate but is used to campaign in his behalf. *United States* v. *C. I. O.*, 335 U. S. 106, 115, 122; see *infra,* pp. 24–36. In view of the great significance of television and radio broadcasts in present-day campaigns, it is readily apparent that paying for a political broadcast on behalf of a particular candidate is a valuable subsidy which rebounds directly to his benefit. Such practice differs but little from a direct contribution; the distinction lies only in the fact that in one instance the candidate would apply contributed funds to purchase television time, and in the other the union would buy it for him. It is a difference of form rather than substance. At the very least, the term

"expenditure," to have any meaning at all, must apply to such broadcasts. And since the indictment here would plainly permit proof of such active direct electioneering, the court below was in error in dismissing the indictment for failure to charge an offense under the statute.

The *C. I. O.* case does not lend any support to a contrary conclusion. Although the Court there held that the "expenditure" provision was not intended to apply to political advocacy in a regular union newspaper distributed to union members, it specifically pointed out (335 U. S. at 111):

> We do not read the indictment as charging an expenditure by the CIO in circulating free copies to nonsubscribers, nonpurchasers or among citizens not entitled to receive copies of "The CIO News," as members of the union.[2]

And further (335 U. S. at 122–123):

> It is one thing to say that trade or labor union periodicals published regularly for members, stockholders or purchasers are allowable under § 313 and quite another to say that in connection with an election occasional pamphlets or dodgers or free copies widely scattered are forbidden.

The distinction was thus drawn between statements of position addressed primarily to the union's own members through a regular union organ of communication, on the one hand, and active electioneering

[2] The court held that the allegation that 1,000 extra copies had been run off "charges nothing more" than that the extra copies "were distributed in regular course to members or purchasers" (335 U. S. at 111–112).

addressed to the public at large, on the other. Stated otherwise, the distinction is between a union's use of the normal avenues for expression of the organization's policies to its own members and the special use of general funds, contributed by all members, in support of the political campaign of a particular candidate.

From the face of this indictment, there are no facts which would bring this case within the narrow holding of the *C. I. O.* case that expressions of political advocacy in a regularly published union newspaper are not within the scope of the "expenditure" provision. The indictment could just as well apply to a broadcast analogous to the type of expenditure which in *C. I. O.* this Court stated it was not passing upon—*i. e.,* special electioneering activities. The court below failed to note that the specific facts on which the *C. I. O.* decision rested appeared from the face of the indictment in that case. That decision cannot be automatically applied to this indictment where no equivalent specific facts are alleged. The indictment, as written, must be tested against the statute to see whether, as written, it charges a crime. *United States* v. *Green,* 350 U. S. 415, 418, 421.

The court below also relied on *United States* v. *Painters Local Union,* 172 F. 2d 854 (C. A. 2), which involved a political broadcast over a commercial radio station and a political advertisement in a daily newspaper of general circulation. However, the facts developed on the trial, which the Second Circuit deemed controlling, were that the expenditures for the advertisement and broadcast were expressly authorized at

a special membership meeting; that the amounts involved were very small (*i. e.*, $111.14 for the newspaper space and $32.50 for the radio time); and that, as the court observed, "this small union owned no newspaper and a publication in the daily press or by radio was as natural a way of communicating its views to its members as by a newspaper of its own" (172 F. 2d at 856). In short, the Court of Appeals found that the particular union-financed activities shown on the trial were comparable to the intraunion "house organ" involved in the *C. I. O.* case, rather than an attempt to reach the public by political campaigning. While we cannot subscribe to this reasoning, nor with the apparent application of a *de minimis* rule in the enforcement of Section 610,[3] we also cannot perceive the applicability of that case to this one. Here the defendant is a large international union organization, and the indictment alleges that substantial amounts were expended for each broadcast for the purpose of influencing the general public.[4] Whatever may be the

[3] See Tanenhaus, *Organized Labor's Political Spending: The Law and Its Consequences*, 16 Jour. of Pol. 441, 459–461.

[4] The opinion below makes note of the fact that no petition for a writ of certiorari was filed in the *Painters Local* case to seek review of the Second Circuit's opinion. In addition to the fact that such nonaction by the Government has no legal significance (*Andres* v. *United States*, 333 U. S. 740, 756, concurring op. of Mr. Justice Frankfurter), no direct conflict was presented by the narrow holding in that case.

The other decision relied upon by the court below, *United States* v. *Construction and General Lab. L. U.*, 101 F. Supp. 869 (W. D. Mo.), also turned on its special facts. In that case, the court apparently believed that the amounts involved were too small to be either a contribution or expenditure. Since there was a directed verdict of acquittal, the Government could not appeal.

limitations of the term "expenditure," we think it is clear that it must cover some types of broadcasts of the kind alleged in this indictment—*i. e.*, political broadcasts over a commercial station paid for out of general funds and designed to influence the public at large to vote for a particular candidate in a particular election.

Shorn of any case support, the conclusion of the court below is also unsupported by any other relevant criterion of statutory interpretation. In addition to its error in attempting to extend the already "strained" decision in the *C. I. O.* case (*United States* v. *Rumely*, 345 U. S. 41, 47) to cover the far broader allegations of this indictment, the decision falls into the even more fundamental error of ignoring evidence of Congressional intent. The court placed heavy emphasis on the interpretative canon that a court will endeavor to construe a statute to avoid serious doubts as to constitutionality. However, while such a canon has a real purpose where there is an ambiguity of language and Congressional intent is otherwise obscured (cf. *United States* v. *Harriss*, 347 U. S. 612; *United States* v. *Rumely*, 345 U. S. 41, 45–46), it is not a device whereby a judicial meaning may be freely substituted for the legislative. As this Court has said, "a restrictive interpretation should not be given a statute merely because * * * giving effect to the express language employed by Congress might require a court to face a constitutional question." *United States* v. *Sullivan*, 332 U. S. 689, 693. Cf. *United States* v. *Bramblett*, 348 U. S. 503, 509–510.

By purporting to narrow the construction of the disputed term to bring it within safe range of constitutional validity, the decision below actually results in a holding that *no* union-financed political broadcasts, regardless of character or surrounding circumstances, can ever be in violation of the section. Inferentially this holding would also seem to apply to union expenditures for all other media of communication to the general public. Nor does there appear to be any sound basis for distinguishing between expenditures by unions and expenditures by corporations. Thus, under the guise of construing the term "expenditure," the ruling below actually leaves it devoid of meaning. If the mere fact that speech or communication is involved justifies the elimination of a particular type of expenditure from coverage under the statute, then the term "expenditure" as used in Section 610 has no content because virtually no otherwise legal "expenditures" for political purposes will be unrelated to speech or communication. The decision below is not really a construction of the statute at all in the sense of narrowing its applicability to specified circumstances within the range of Congressional intent (compare *United States* v. *Harriss,* 347 U. S. 612, 621–624; *United States* v. *Rumely,* 345 U. S. 41, 47) or rejecting its applicability to a specific factual situation alleged in the indictment (*United States* v. *C. I. O.,* 335 U. S. 106). Surely the principle of avoiding constitutional issues cannot be applied so broadly as to eliminate in practical effect a provision which, as we show below, Congress deliberately inserted into the statute to cover

at least some types of political expenditures by unions and corporations.

Conversely, we do not urge that all expressions of political advocacy paid for out of union funds fall within the ban. This Court has already held in the *C. I. O.* case that the expense incurred in maintaining an intraunion "house organ" is not an "expenditure in connection with any election" under the statute. Other hypothetical cases might be cited where the expenditure of union moneys would fall outside the bar of 18 U. S. C. 610, as interpreted in *C. I. O.* Whether the financing of a particular broadcast is in fact an "expenditure" under the statute must be determined on the basis of the proof to be developed at a trial. Compare *United States* v. *Petrillo,* 332 U. S. 1, 11–12. That issue is not here now. The possibility of borderline cases does not justify a holding that no broadcast by a union is covered by the statute. Cf. *United States* v. *Harriss,* 347 U. S. 612, 618. It is sufficient to require a reversal of the judgment below that the term "expenditure" must, in the light of the language and purpose of the statute, cover some political broadcasts by a union paid for out of general funds in behalf of particular candidates in a federal election. The allegations of the present indictment are that the union expended general funds for the specific purpose of urging the general public to support particular candidates. Those allegations permit proof of the use of funds for the special purpose of actively electioneering on behalf of a particular candidate. Such conduct is an offense under the statute.

2. ***The legislative history of 18 U. S. C. 610 shows that it was intended to reach at least those expenditures which are equivalent to an indirect contribution to the campaign of a particular candidate***

This Court, in its decision in *United States* v. *C. I. O.*, 335 U. S. 106, 115, noted that the "expenditure" provision was inserted in Section 304 of the Labor-Management Relations Act of 1947 (61 Stat. 159), from which the present statute stems, because the prior statute prohibiting contributions "could easily be circumvented through indirect contributions." We review, more briefly than did the Government's brief in the *C. I. O.* case (No. 695, O. T. 1947, pp. 13–55), the legislative history that clearly establishes this purpose.

a. *Legislative history prior to the 1947 Act*

The proscription of "contributions" for the purpose of influencing the outcome of federal elections was first enacted in the Act of January 26, 1907, c. 420, 34 Stat. 864, which made it unlawful for any corporation to make a money contribution in connection with a federal election. After it was held in *Newberry* v. *United States*, 256 U. S. 232, that the federal limitation upon expenditures by candidates was unconstitutional as applied to primaries, the Federal Corrupt Practices Act was enacted in 1925. 43 Stat. 1070. While primaries and conventions were expressly excluded from the scope of the legislation, the proscription against corporate contributions for political purposes (Section 313) was continued. However, the term "money contribution" was changed to

"contribution," which was defined in Section 302 (d) to include "a gift, subscription, loan, advance, or deposit, of money, or anything of value", as well as a promise or agreement to make a contribution whether enforceable or not.

In 1943, the proscription against the making of contributions in connection with federal elections[5] was extended to labor organizations. The extension was a temporary one, being effected in Section 9 of the War Labor Disputes Act, which by its terms was to expire at the end of the war. 57 Stat. 167–168. As this Court found in the *C. I. O.* case, the legislative history of Section 9 indicated that it was enacted in response to a Congressional belief "that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose." 335 U. S. at 115.

In 1945, the Special Senate Committee to Investigate Presidential, etc., Campaign Expenditures investigated the activities of the CIO Political Action Committee (CIO-PAC) in the 1944 election. Senate Report No. 101, 79th Cong., 1st Sess. Denying any violation of the Act, the CIO-PAC asserted that its direct contributions were limited to State and local

[5] While the Supreme Court already had recognized, in *United States* v. *Classic*, 313 U. S. 299, the power of Congress to regulate primaries, and such Congressional authority already had been exercised in some provisions of the Hatch Act, this proscription was made applicable only to general elections.

elections and federal primaries and that its activities in federal elections were limited to political and educational activities through "expenditures" on behalf of a candidate as distinguished from "contributions." The Special Committee concluded that the CIO-PAC had not violated the Act since it was expressly inapplicable to primary elections and since the ban did not then extend to "expenditures." As a result of the hearings, it was recommended that the proscription be extended to primary campaigns and nominating conventions (p. 81). In addition, Senators Ball and Ferguson proposed that "expenditures," as well as "contributions," be included in the ban on the ground that the investigation showed a pattern for avoiding the limitation on "contributions" by aiding a favored party or candidate through "expenditures" (p. 83). A majority of the Committee rejected this proposal.

In 1945, the House Special Committee to Investigate Campaign Expenditures, 78th Cong., 2d Sess., issued a report (No. 2093) on its investigation of the extent and nature of contributions and expenditures in connection with the election of Representatives. The Committee found, *inter alia,* that the purposes of the Federal Corrupt Practices Act were being circumvented by such organizations as the CIO-PAC, particularly in respect to the use of levied funds to promote political activities during party primaries and prior to elections. Accordingly, the Committee recommended that the prohibition against contributions in connection with elections be extended to pri-

maries (p. 9). And, relative to extension of the prohibition to "expenditures," it was stated (p. 11):

> It has been the contention of union groups that money expended by them for or against a political candidate or party and not given directly to candidates or political parties, is not a contribution as defined in the law but is an expenditure not restricted by law.
>
> If such a distinction stands then national banks, corporations, and groups, as well as labor organizations, might avail themselves of this avenue to avoid the provisions of the existing law.
>
> It is not the province of this committee to attempt to answer these questions here, but attention is directed to the facts developed by the hearings to which the proper legislative committees of the Congress should give such consideration as they deem proper.

In 1946, further investigation of campaign expenditures by the CIO-PAC, A. F. of L., and numerous political committees and organizations was conducted by the House Special Committee on Campaign Expenditures, 1946. See House Report No. 2739, 79th Cong., 2d Sess. On the basis of this investigation, the Committee concluded that the limitation on contributions by corporations and labor organizations was rendered ineffective because of the widespread "expenditures" made by these organizations in behalf of a favored candidate. The Committee stated (pp. 39–40):

> The apparent purpose of the provisions of the act, limiting the amount of expenditures by candidates, appears to be defeated by the fact

that there is no limit to the amount that a political committee or other organization may expend in behalf of a candidate. While the candidates have, to the greater part, limited their expenditures to the maximum allowed under the terms of the act, there is widespread activity by organizations functioning for the purpose of aiding and assisting in the election of candidates, in securing contributions and making expenditures in behalf of candidates, which expenditures are not included within the limitations which the candidates themselves may expend.

There is evidence before the committee that some organizations which are prohibited from making contributions in a political campaign have made expenditures and have engaged in activities the purpose of which were to endeavor to influence the election or defeat of candidates.

It is noted that the act prohibits contributions and does not expressly prohibit expenditures. It is reported to the committee that a former Attorney General had issued a ruling to the effect that the activities above-mentioned do not constitute the making of contributions. It is conceivable that the word "contribution" might imply a giving on one hand and accepting on the other, yet from the study of the history of this provision of the act, the committee feels that the activities hereinabove referred to, which are carried on on an extensive scale, constitute violations of the spirit and intent of the act.

The intent and purpose of the provision of the act prohibiting any corporation or labor

> organization making any contribution in connection with any election would be wholly defeated if it were assumed that the term "making any contribution" related only to the donating of money directly to a candidate, and excluded the vast expenditures of money in the activities herein shown to be engaged in extensively. Of what avail would a law be to prohibit the contributing direct to a candidate and yet permit the expenditure of large sums in his behalf?
>
> The committee is firmly convinced, after a thorough study of the provisions of the act, the legislative history of the same, and the debates on the said provisions when it was pending before the House, that the act was intended to prohibit such expenditures.

The Committee also recommended that legislation be enacted making the restriction on contributions by labor organizations permanent and extending the restriction to include "expenditures" as well (pp. 45–46).

In 1946, the Special Committee to Investigate Senatorial Campaign Expenditures also considered these problems and subsequently recommended that primaries and conventions be covered and that "expenditures" as well as "contributions" be included in the ban (S. Report No. 1, Part 2, 80th Cong., 1st Sess., pp. 36–39). As to the extension of the restriction to include "expenditures," the Committee states (pp. 38–39):

> Section 313 of the Federal Corrupt Practices Act of 1925 as amended applies only to "contributions." Experience has shown that some

corporations and labor unions have spent money directly on behalf of a political party or candidate and that the applicability of the prohibition upon contributions has in consequence been denied. A redefinition of the terms "contribution" and "expenditure" as recommended in 3 above, coupled with specific extension of the prohibition to include a prohibition upon "expenditures" will plug the existing loophole whereby corporations, national banks, and labor organizations are enabled to avoid the obviously intended restrictive policy of the statute by garbing their financial assistance in the form of an "expenditure" rather than a contribution.

Thus, prior to the enactment of the Labor Management Relations Act of 1947, committees of Congress had been concerned with the avoidance of the prohibition against "contributions" by "expenditures," i. e., activities which, although they had substantially the same effect as a contribution, were deemed not to be within the prohibition.

b. *The Labor Management Relations Act of 1947*

The concern of the various committees discussed above with the avoidance of the prohibition against contributions was reflected in Section 304 of the Labor Management Relations Act of 1947,* which amended Section 313 of the Federal Corrupt Practices Act to prohibit "expenditures" as well as "contributions" by corporations and labor unions. The new section also extended the prohibitions to primaries as well

* Act of June 23, 1947, c. 120, Title III, Section 304, 61 Stat. 159.

as general elections and made permanent the application of the section to labor unions.

The committee reports and debates preceding passage of Section 304 are set out in full in the Appendix to the brief of the Government in the *C. I. O.* case (No. 695, O. T. 1947). These materials make it abundantly clear that the purpose of inserting the "expenditure" provision was to prevent the by-passing of the prohibition against "contributions." For example, Senator Taft stated during floor debate (93 Cong. Rec. 6439):

> * * * If "contribution" does not mean "expenditure," then a candidate for office could have his corporation friends publish an advertisement for him in the newspapers every day for a month before election. I do not think the law contemplated such a thing, but it was claimed that it did, at least when it applied to labor organizations. So, all we are doing here is plugging up the hole which developed, following the recommendation by our own Elections Committee, in the Ellender bill.

It is likewise clear that the Members of Congress, both proponents and opponents of the measure, considered that expenditures for radio broadcasts might well be the type of indirect contribution which the term "expenditure" was designed to reach. The issue was directly raised (93 Cong. Rec. 6439):

> Mr. PEPPER. Does what the Senator has said in the past also apply to a radio speech? If a national labor union, for example, should believe that it was in the public interest to elect the Democratic party instead of the Republican

party, or vice versa, would it be forbidden by this proposed act to pay for any radio time, for anybody to make a speech that would express to the people the point of view of that organization?

Mr. TAFT. If it contributed its own funds to get somebody to make the speech, I would say they would violate the law.

Mr. PEPPER. If they paid for the radio time?

Mr. TAFT. If they are simply giving the time, I would say not; I would say that is in the course of their regular business.

Mr. PEPPER. What I mean is this: I was not assuming that the radio station was owned by the labor organization. Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?

Mr. TAFT. Yes.

Various indirect forms of radio expenditures were also discussed (93 Cong. Rec. 6439–6440):

Mr. BARKLEY. Suppose a certain corporation, for instance, the corporation that makes Bayer aspirin, or Jergens lotion, or any other well-advertised product, employs a commentator to talk about various things, winding up with an advertisement of the product, and suppose that the radio commentator from day to day takes advantage of his employment or his sponsorship

to make comments which are calculated to influence the opinions of men or women as to political candidates. Would the corporation sponsoring the particular commentator be violating the law?

Mr. TAFT. I should have to know the exact facts. If, for instance, apart from commentators and the radio, and taking the case of a paid advertisement, suppose a corporation advertises its products, and that every day for 2 weeks before the election it advertises a candidate, I should say that would be a violation of the law. I would say the same thing probably would be true of a radio broadcast of that kind, under certain circumstances, but I think I should like to know the exact facts before expressing an opinion.

Mr. BARKLEY. In the case of a commentator who is paid to advertise a certain product, and who in the course of his 15 minutes on the radio may also seek to influence votes, the sponsor may say, either before or after the broadcast, that he is not responsible for what the commentary says; yet he is paying the commentator for his broadcast. Would that still be a violation of law, although the sponsor might excuse himself or attempt to excuse himself by saying he was not responsible for the opinions expressed by the commentator?

Mr. TAFT. I think there are all degrees. It would be for a court to decide. I think as a matter of fact, if that had happened under the old law, there would have been the same question.

I want to make the point that we are not raising any new questions here. Those same

questions could have been raised with respect to corporations during the past 25 years. It is a question of fact: Was the corporation using its money to influence a political election?

* * * * *

Mr. MAGNUSON. Let us consider the teamsters. Suppose they have a weekly radio program, as, indeed, they have had for a long time back. Or let us say the AFL has such a radio program. Let us assume I am running for office and they ask me to be a guest on their program. Suppose I talk on the subject of labor and do not advocate my own candidacy. Nevertheless I am on that program. My name is being advertised and I am being heard by many thousands of people. Would that be an unlawful contribution to my candidacy?

Mr. TAFT. If a labor organization is using the funds provided by its members through payment of union dues to put speakers on the radio for Mr. X against Mr. Y, that should be a violation of the law.

Mr. MAGNUSON. They are not paying me anything. They have asked me to be a guest.

Mr. TAFT. I understand, but they are paying for the time on the air. Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or a corporation is making a contribution or expenditure of funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics.

The question again arose during the debates in this colloquy (93 Cong. Rec. 6447):

> Mr. TAYLOR. * * * Take the matter of a radio program sponsored by either a union or a corporation. I think the AFL or the CIO, one or the other, has a news commentator who comments on the news. Could he comment on political candidates favorably or unfavorably?
>
> Mr. TAFT. If the General Motors Corp. had a man speaking on the radio every week to advocate the election of a Republican or a Democratic Presidential candidate, the corporation ought to be punished, and it would be punished under the law. Labor organizations should be subject to the same rule.
>
> Mr. TAYLOR. That is altogether different. It is a more subtle thing. When a commentator is broadcasting the news every day he can do a lot more good or harm to a man by coloring his broadcast and presenting it in the guise of a news commentary than he could openly.
>
> Mr. TAFT. The Senator is right. It is a question of fact which would have to be raised in every case. Is it a contribution to a candidate or is it not? Possibly a knock is a boost sometimes. That argument might well be made by a person who was taking part in an election.

Thus, while it was recognized that there might be issues as to whether a particular broadcast fell within the prohibition of the statute, there can be no doubt that the law was meant, by its interdiction against "expenditures," to cover *some* forms of political broadcasting by unions. Whatever may have been the congressional intent with respect to peripheral

activities of the type involved in the *C. I. O.* case, the legislative history of Section 610 makes clear that at the very least the statute was designed to reach union expenditures relating to public broadcasting to influence the public at large to support particular union-endorsed candidates in federal elections. That being so, it must follow that the court below erred in dismissing the indictment for failure to state an offense under the statute.

II

SECTION 610, IF CONSTRUED TO PROHIBIT USE OF GENERAL UNION FUNDS FOR POLITICAL ELECTIONEERING BROADCASTS ON BEHALF OF PARTICULAR CANDIDATES, IS NOT UNCONSTITUTIONAL UNDER THE FIRST AMENDMENT

For the reasons already stated (*supra*, p. 14), if this Court agrees that the court below erred in its construction of the statute, the case might be properly remanded to the district court for trial without passing on the constitutionality of the statute at this stage in the proceeding. However, since the court below based its construction in large part on the principle of avoiding constitutional issues, we believe that it is incumbent upon us to show that the statute, if construed in accordance with the clear Congressional purpose to prohibit the use of general union funds for political electioneering broadcasts in favor of particular candidates, is not invalid under the First Amendment.

Today there can be no doubt of the power in Congress to preserve the purity of federal elections and for that purpose to enact laws regulating the conduct

of federal elections. Such power stems from Article 1, Section 4, of the Constitution, and its exercise has been sustained by this Court in a variety of circumstances. See *United States* v. *Harriss,* 347 U. S. 612, 625; *United States* v. *Classic,* 313 U. S. 299, 320; *Smiley* v. *Holm,* 285 U. S. 355, 366; *Burroughs and Cannon* v. *United States,* 290 U. S. 534, 544–545; *United States* v. *Gradwell,* 243 U. S. 476, 482; *Ex parte Yarbrough,* 110 U. S. 651, 666–667. See also *United States* v. *United States Brewers' Assn.,* 239 Fed. 163 (W. D. Pa.). The question here, therefore, is the validity of the particular means of regulation chosen by Congress in enacting Section 610.

A. THE HISTORY OF UNION POLITICAL ACTIVITIES IN THE LAST NINE YEARS SHOWS THAT THE STATUTE HAS PRESERVED A REASONABLE BALANCE BETWEEN THE EXPRESSION OF BLOC SENTIMENT AND THE PROTECTION OF INDIVIDUAL UNION MEMBERS

In dealing with this issue, we now have the benefit of nine years of experience under the statute. This Court has long recognized that the changes of time and circumstances may alter one way or another the constitutional justification for governmental action. *Chastleton Corp.* v. *Sinclair,* 264 U. S. 543, 548; see also *Brown* v. *Board of Education,* 347 U. S. 483, 492–493. Similarly, the validity of Section 610 cannot be determined in the abstract without reference to its practical effects. Cf. *Alabama State Federation of Labor* v. *McAdory,* 325 U. S. 450, 465–466; *Borden's Farm Products Co.* v. *Baldwin,* 293 U. S. 194. Actual experience, as we shall develop, demonstrates that the statute, under the construction given

it by the Court in the *C. I. O.* decision, has not silenced the political voice of labor unions. It has, instead, proved to be a regulatory measure which has made it possible to discriminate between the legitimate expression of the union's views to its membership, for which general funds may properly be used, and more purely political activities, for which only special funds contributed voluntarily by the membership are properly used.

Since 1948, when four Justices would have held in the *C. I. O.* case that the "expenditure" provision of Section 610 was an unreasonable prohibition of "the expression of bloc sentiment" (335 U. S. at 143, concurring opinion of Mr. Justice Rutledge), the entire organizational structure of the American labor movement has undergone basic changes, and it is still in the process of centralizing and regrouping. In particular, changes have been made in the political committees of the major unions. There has been created a voluntary political organization consisting of committees, which parallel at every level the operative union organizations, to give public expression to union political sentiment. To appraise the impact of Section 610 on the ability of union members to articulate their collective political views in federal elections, and to meet the contention that Section 610 is a "complete prohibition" of the right of union majorities "to make expenditures for directly and openly publicizing their political views and information supporting them" (*United States* v. *C. I. O., supra,* 335 U. S. at 145, per Mr. Justice Rutledge), it is useful to review the history of this development.

1. *The power of union majorities to express their collective political sentiments has been preserved through the development of voluntarily supported political committees*

In 1943, in response to the passage of Section 9 of the Smith-Connally Act (the War Labor Disputes Act, *supra,* p. 25), the C. I. O. organized its Political Action Committee (CIO-PAC).[7] This organization, to avoid the prohibition against forced levies on the general treasuries of union locals for political "contributions" in postprimary union electioneering, relied on voluntary financial support from the membership of the various union subsidiaries. A similar organization, Labor's League for Political Education (AFL-LLPE), was established by the A. F. of L. shortly after passage of the Taft-Hartley Act in 1947, which extended the prohibitions of the Federal Corrupt Practices Act to "expenditures" for political purposes and to primary campaigns as well as general elections.[8] In addition to the two major political committees, a number of independent unions also maintained political committees, such as the International Association of Machinists' Nonpartisan Political League and the Railway Labor's Political League.[9] By 1954, there were forty-one separate political committees which operated in two or more

[7] Tanenhaus, *Labor's Political Spending*, v. 16, Jour. of Pol., 441, 449–450.

[8] Daugherty and Parrish, *The Labor Problems of American Society*, p. 412; Chang, *Labor Political Action and the Taft-Hartley Act*, 33 Neb. L. R. 554, 558.

[9] Chang, *Labor Political Action and the Taft-Hartley Act*, 33 Neb. L. R. 554, 558, fn. 25.

States and which reported their contributions and expenditures to the Clerk of the House of Representatives. This number, of course, does not include all of the State and local committees which do not so report.

Both the CIO-PAC and the AFL-LLPE, the two largest national committees, operated through State and local affiliates, which were supported through voluntary contributions collected directly from individuals rather than through union channels. Such contributions were divided evenly between State and national political committees.[10] The organization and functions of the CIO-PAC have been described by its director as follows:[11]

> The formal structure of the local Political Action Committees varies greatly from local to local and from community to community. In most instances, the local union has a Political Action Committee with the president of the local acting as chairman, and a specially designated person does the actual day-to-day work. If the local is large enough to sustain paid officers, the political action worker may be a paid employee of the local. More often he is compensated for time lost from his job because of his political action activities. Other members of the committee include members of the local executive board, shop stewards, grievance com-

[10] Keenan, *The AFL-LLPE and How It Works*, The House of Labor, pp. 114–115; Kroll, *The CIO-PAC and How It Works*, The House of Labor, pp. 121–122; AFL-CIO News, Vol. I, No. 17, March 31, 1956, pp. 1, 16.

[11] Kroll, *The CIO-PAC and How It Works* (*ibid.*), p. 120.

mitteemen, and other members of the local willing to work.

Above the local level there are the city and county Political Action Committees and the congressional district PAC. The city or county PAC parallels, in most instances, the city or county industrial union council, in that it is a delegate body composed of representatives of locals within the geographical area covered by the industrial union council. The congressional district PAC has no parallel in the industrial union structure but it, too, is a delegate body concerned primarily with election of the congressional candidate from that district. It exists principally in the large cities of the nation represented by a number of Congressmen (such as Chicago and Philadelphia).

The city or county PAC directs the political action work within its geographical area and selects candidates to be chosen by the voters within that area. Thus mayors, city councilmen, sheriffs, municipal and county judges, and other public officials on that level are supported or opposed according to the decisions of the city or county PAC.

The congressional district PAC performs a similar endorsement function with reference to congressional candidates.

On the next higher level are the State Political Action Committees. These committees are often more formal in their nature than the city or county PACs or the congressional district PACs in that they have constitutions, by-laws, and procedures in accordance with a fixed pattern. Virtually all states now have Political

Action Committees, formally established and operating under constitutions and by-laws.

The organization and functions of the AFL-LLPE have been described by its director as follows:[12]

> There are local LLPE's in every state and principal city, but still not in every congressional district. Geographically, the organizational setup follows, for the most part, the same pattern as that of the political parties. At the same time it take advantage of AFL national, state, and local administrative arrangements.
>
> But it should be understood that the administrative arrangements of local Leagues are very flexible. The local Leagues adjust their methods of operation to meet the conditions of their particular communities. They use all of the resources available in their areas—such as local AFL and CIO unions, PAC, and other interests groups—and coordinate the activities of the organizations working with them. They will also cooperate with the established political parties under given circumstances.
>
> The policy committee on the state level is usually the State AFL Executive Council. The legislative body of the State LLPE is made up of delegates from the local unions and the local LLPE's. Voting quotas in some cases are determined on the basis of per capita tax payments to the State LLPE.
>
> Local LLPE's are organized by area (comprising two or more congressional districts within the state), congressional districts, and city levels. There are also league representa-

[12] Keenan, *The AFL-LLPE and How it Works* (*ibid.*), pp. 113–115.

tives in local unions, union shops and plants, and election precincts. The officers of the local LLPE's are usually men and women holding office at a corresponding level of the local AFL union structure.

The local LLPE may either establish separate headquarters or share them with the central trades union. Headquarters are staffed to perform many of the same functions undertaken by local political party headquarters. From these offices the local League publishes facts about the candidates it supports, arranges their radio programs, issues posters and flyers, sends out letters and telegrams, and arranges speeches throughout the area it covers. Direct daily contact with the voters is maintained through representatives in union shops and leaders in election precincts. For example, each shop under the jurisdiction of the ILGWU has a political steward who works independently of the shop steward. His duties are: to keep members informed of actions taken by Congress and state legislatures; to encourage members to write to their Congressmen and legislators; to make sure that members and their families register and vote; and finally, to explain the issues of the political campaign.

NATIONAL ACTIVITIES

The national LLPE therefore has a huge task of coordinating policy and activities. To finance its program, the national LLPE collects voluntary contributions from individual union members. Local union shop collectors receive from the national LLPE office receipt books (printed in triplicate) and League buttons. A

button and the original copy of the receipt go to the contributor and the second copy is forwarded to national headquarters. The third copy is kept by the collector. The money is mailed to Washington weekly. The state LLPE is reimbursed for half of its collection. The remainder is allocated by national headquarters where it is most needed.

The national League provides the following services for the local Leagues and all other politically activated local AFL units:

1. *The League Reporter,* a four-page newspaper, is published weekly. It is sent to every AFL and LLPE affiliate and is available to anyone else who desires to subscribe. *The League Reporter* analyzes bills before Congress. It keeps its members informed of the voting record in the House and Senate. It reports national trends of interest to labor as culled from other sources.

In order to insure widespread dissemination of its news, this publication urges local Leagues, labor press, and union journals to reprint its articles. Mats and cuts are also available after publication in *The League Reporter.*

2. The national LLPE office prepares and broadcasts radio programs and gives assistance to the local LLPE's and the local AFL union radio stations in the preparation of their own programs. The national LLPE makes platters and distributes them to the local LLPE's for use on their stations. The local LLPE then prepares its own introductory remarks. These recordings are also made on phonograph records for use at local union meetings. And the national LLPE prepares programs for use on

> nationwide hookups. It is up to the local LLPE's to persuade local network stations to carry the programs if they are not already doing so. At present, Frank Edwards is broadcasting over the Mutual network five nights weekly, reporting the AFL view of the news.
>
> The radio department of the national LLPE advertises through *The League Reporter* the radio schedules of Congressmen and Senators friendly to labor and the local stations over which they will speak. In addition, the national LLPE supplies publicity material to the local Leagues for use in their localities, and suggests methods of using programs most fully, such as posting notices of radio programs on union bulletin boards and discussing programs at union meetings.

As these excerpts make clear, the committees selected candidates favorable to labor and actively participated in nationwide campaigning through every medium of communication, not only among the union membership but among the public at large.[13]

The total extent of the actual contributions and expenditures of these committees is somewhat obscured by two factors: (1) the practice of including many items of political expenditures under the caption of "educational" purposes in reports to the House of Representatives; and (2) the fact that contributions and expenditures made by State and local LLPE's

[13] Wartenberg, *Political Action in a Congressional District*, The House of Labor (Hardman and Neufeld, ed.), pp. 126–133; Keenan, *The AFL-LLPE and How It Works* (*ibid.*, pp. 113–115); Kroll, *The CIO-PAC and How It Works* (*ibid.*, pp. 122–125).

and PAC's operating within a single State were not reported to the Clerk of the House of Representatives since the national committees maintained that such organizations were not subsidiaries of the national organization.[14] Thus, while in the 1954 national elections a total of $2,057,613 was reported to have been spent by forty-one labor organizations which filed such information with the Clerk of the House of Representatives, this is not an accurate representation of the total activities of labor in the national political field but only represents top-echelon political spending.[15]

The merger of the two principal labor federations, the AFL and the CIO, was effected in December, 1955. The new group, the AFL-CIO, is composed of unions having a combined membership of about fifteen million workers.[16] In line with this amalgamation,

[14] Tanenhaus, *Organized Labor's Political Spending: The Law and Its Consequences*, *supra*, pp. 462, fn. 64, 470.

[15] Of the total amount of $2,057,613 reported to have been spent by forty-one labor organizations in 1954, all but a small part of the total (*viz.* $1,978,546) was spent by ten political committees. Of this amount, the bulk ($1,240,115) was spent by the CIO-PAC and the AFL-LLPE. Most of this money was contributed directly to Congressional campaign committees, although some was reallocated to State PAC's and LLPE's. The 1954 report of the New York CIO-PAC, the only State political committee reporting as a committee operating in two or more States, indicates that the committee spent its political funds for political meetings, surveys of political attitudes, radio and television political advertising including radio "spot" announcements, political trailers, posters, pins, bumper signs, and other political materials.

[16] See AFL-CIO News, Vol. I, No. 1, p. 1, Dec. 1950; Gamser, *After Merger—AFL-CIO's Program and Problems*, Vol. 7, No.

the political committees of the AFL and the CIO were merged into a new committee to be known as the Committee on Political Education (COPE). In addition, a political program "in the Gompers tradition" was adopted, including "more intensive campaigning for labor's friends and against labor's enemies." [17] COPE is made up of local and State committees of AFL-CIO members, and a national committee consisting of the AFL-CIO Executive Council and officers of international unions. Its national chairman is AFL-CIO president George Meany, its secretary-treasurer is AFL-CIO's secretary-treasurer William F. Schnitzler, and its co-directors are the former national directors of PAC and LLPE, Jack Kroll and James L. McDevitt, respectively. The remainder of its national staff is made up of nineteen vice-presidents of the AFL-CIO.[18] It is voluntarily financed by dollar drives as were its predecessor committees. Of every dollar contributed, half is used by local and State committees, and the other half is used by national COPE "to aid worthy candidates for national offices." [19] According to its

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2, Labor Law Journal, pp. 73, 76; AFL-CIO News, Vol. 1, No. 13, p. 2, Mar. 3, 1956.

[17] Gamser, *After Merger—AFL-CIO's Program and Problems*, Vol. 7, No. 2, Labor Law Journal, pp. 73, 76.

[18] *What Is Cope*, p. 2 (pamphlet of the AFL-CIO Committee on Political Education); *Political Memo from Cope*, No. 2–56, p. 1, and No. 4–56, p. 1. *Political Memo from Cope* is the regular bi-monthly publication of the AFL-CIO Committee on Political Education.

[19] *What Is Cope* (*supra*), p. 4; and see AFL-CIO News, Vol. 1, No. 17, pp. 1, 16 (March 13, 1956).

own publications, "the policies of COPE are determined by the national committee of COPE in the light of actions of the AFL-CIO convention,"[20] although "endorsements for the Senate and House will be made by state and district units of the Committee."[21]

2. *Under the statute, as construed in United States v. C. I. O., 335 U. S. 106, there is ample opportunity for the union as an entity to express its collective views on political problems.*

The work of voluntary political action groups is by no means the full measure of labor's political activities.

In the first place, this Court's *C. I. O.* decision—that political views expressed in union newspapers and other "house organs" are not within the coverage of the statute—leaves open a large avenue for dissemination of the collective view of the union as an entity. This avenue is in fact extensively used. Professor Tanenhaus in his article "Organized Labor's Political Spending: The Law and Its Consequenses" describes this trend as follows (16 The Journal of Politics, pp. 441, 464):

> Narrow as the CIO holding appears, its practical consequences were considerable. Shortly after the 1948 elections the Administrative Committee of Labor's League for Political Education issued its first report. From the day of the CIO decision, wrote the Committee, "the

[20] *What Is Cope* (*supra*), p. 3.
[21] *Political Memo from COPE*, No. 4–56, p. 1.

> weekly labor papers and union journals became our main instrument of political education." Labor papers reprinted special political articles designated particularly for that purpose, and at least one paper issued special editions, each "carefully tailored to the State to which it went with appropriate pictures and editorial matter." So effective did the labor press prove that LLPE found it necessary to publish no more than 1,250,000 pieces of campaign literature in 1948. Even the pamphlet-minded CIO, which had used 85 million pieces of literature in the 1944 campaign, distributed but 10 million copies of printed material in 1948 and 15 million in 1952. Clearly the labor press, "properly tailored", spared labor's political committees the expense of printing and distributing much costly literature.

Director Keenan wrote ("The AFL-LLPE and How It Works," *supra*, at 116):

> Regularly published union papers and journals are not forbidden from carrying partisan political stories. Through these union publications, financed largely from union funds, we are able to get our message into every trade union home.
>
> In spite of the difficulties created by Section 313, the 1948 election and the special elections during 1949 demonstrated that the authors of the Taft-Hartley Act were not successful in preventing unions and union members from organizing for political purposes. AFL unions are obviously determined to assume their proper responsibility to the public and to their members as far as political action is concerned.

Secondly, as noted above a large part of what is essentially political activity is carried out through "educational" programs. Director Keenan candidly stated (*supra*, at 116):

> The League is scrupulously careful to operate within the terms of the Act as interpreted by our lawyers. Nevertheless, for certain important political activities, union funds and facilities can be used. For instance, between elections the activities of the League are devoted entirely to educational purposes. These activities involve informing our members on the legislative issues, action of Congress, and the voting records of Congressmen on specific pieces of legislation. For this purpose we use radio broadcasts and our weekly newspaper as well as special releases of various sorts. To finance these activities each International was asked to contribute 10 cents per member for the full period between December 1, 1949, and February 1, 1950. Since none of this money was to be used in behalf of any particular candidate, the contribution could be made from union funds. Another voluntary contribution drive was organized to finance our activities in the 1950 election when we were again bound by the Taft-Hartley restriction.

Thirdly, general funds can legitimately be used under Section 610 in behalf of State candidates and for the purpose of carrying on registration drives. "Thus," as Director Keenan pointed out (*ibid.*), "in many areas the preliminary work of registering our members and establishing precinct committees has been financed from funds raised by assessment."

This, then, is Section 610 in operation. Under the *C. I. O.* decision, the general funds of the union may be used for a wide variety of political activities. Even active political endorsement is permissible through the medium of regular union newspapers and other house organs directed primarily to the membership. It is only when the union undertakes active electioneering, on behalf of particular federal candidates and designed to reach the public at large, that general funds of all the members may not be used. Such activities must, under the statute, be financed instead by the voluntary contributions of those union members whose views coincide with the official union position. And the experience of the past nine years shows that complex and effective organizations can be maintained on the basis of such voluntary contributions. Union labor's voice has certainly not been silenced; it has hardly been muffled.

B. THE STATUTE IS DESIGNED TO ACHIEVE LEGITIMATE AND IMPORTANT LEGISLATIVE OBJECTIVES

As was developed at some length in the brief for the United States in the *C. I. O.* case (No. 695, O. T. 1947), Congress in enacting Section 610 was attempting to achieve several objectives: (1) to reduce what had come to be regarded in the light of past experience as the undue and disproportionate influence of labor unions upon federal elections; (2) to preserve the purity of such elections, and of official conduct ensuing from the choices made in them, against the use of aggregated wealth by union as well as comporate entities; and (3) to protect union members

holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance by the public of those opposing views. Following the lead of Mr. Justice Rutledge's concurring opinion in the *C. I. O.* case (335 U. S. at 135), we shall denominate these factors "undue influence," "purity of elections," and "minority protection" in our discussion. As Mr. Justice Rutledge commented (*ibid.*), they "are obviously interrelated, but not identical."

1. *"Undue influence" and "purity of elections"*

Although the prohibition in Section 9 of the War Labor Disputes Act against union "contributions" inhibited the direct subsidy of political candidates for federal office, it did not prevent large-scale "expenditures" by unions from general funds for political campaigning. In the Senate debates, this factor was stressed as the primary basis for the Section 304 amendment to the Taft-Hartley Act (the predecessor of 18 U. S. C. 610). See pp. 30–35, *supra*. The cause for this Congressional concern over the "expenditures" loophole was not organized labor's political activity in itself, for by 1947 political committees such as the CIO-PAC had become vocal organs of a large segment of labor and there was no intimation of any legislative desire to inhibit such activity so long as it was voluntarily financed.[22] What Congress particu-

[22] Senator Taft told the Senate (93 Cong. Rec. 6439, 6440): "If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that."

larly sought to reach was the union practice of spending general funds contributed by all members to finance the presentation of a single viewpoint regardless of the diversity of political views within the membership. Thus, the thrust of Section 304 was directed against the use of an often large "captive audience" of unwilling participants in an attempt to achieve a political goal sometimes desired by a majority of the members, but often decided upon by a policy committee or regional conference whose contact with the individual unionists may be fairly remote.[23] Because of comparable problems with respect to corporations and their stockholders, the provision was also made

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"A union can * * * organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose."

[23] The selection of candidates for political endorsement, like other questions of political policy, are not submitted to local unions to obtain any clear-cut consensus of individual thinking. In this respect the situation involved in *DeMille* v. *American Federation of Radio Artists*, 31 Cal. 2d 137, 187 Pac. 2d 769, certiorari denied, 333 U. S. 876, seems to be atypical. National union officers and observers are in agreement that political policy toward federal elections is settled in regional political conferences in committee. See Kroll, *The CIO-PAC and How It Works*, The House of Labor (Hardman and Neufeld), pp. 117, 122–123; Keenan, *The AFL-LLPE and How It Works*, The House of Labor, p. 133; Hudson and Rosen, *Union Political Action*, 7 Industrial and Labor Relations Rev., pp. 404, 407–408; *Political Memo from COPE*, No. 4–56, p. 1. And see the statement attributed to AFL-CIO Vice-President Walter P. Reuther, AFL–CIO News, December 17, 1955, Vol. I, No. 2, p. 1.

applicable to corporate expenditures from general funds.

Congress has frequently recognized the dangers of pressure groups which purport to speak for large blocs of voters, and has in many ways restricted their activities to the end that the public and the legislators themselves will not be deceived as to the true nature of their constituent membership and the source of their financial strength. The Federal Lobbying Act is but one example of this problem. *United States* v. *Harriss,* 347 U. S. 612, 625. Section 610 is another. If unions or corporations could make compulsory calls against the general funds of their organizations, either group would be in a particularly strong position to exert pressure completely disproportionate to the number of members or stockholders who support the official position. In addition, the practice would facilitate shifting funds to national or regional committees for use in selected regions and utilizing the limited channels of public communication so as to submerge through sheer spending power any effective rival viewpoint. Since the political advertising which precedes an election is frequently a vital factor in influencing voters, its monopolization by artificial entities acting under a vague and attenuated proxy from their membership could seriously threaten the integrity of the elective process, especially where the public is never adequately apprised as to the actual constituent voting strength of the entity in that locality or as to voter sentiment within the entity itself. In enacting Section 610, Congress was in part seeking to deal with this problem. Cf. *United States* v.

United States Brewers' Association, 239 Fed. 163, 168–169 (W. D. Pa.) (sustaining the constitutionality of the ban against corporate contributions).[24] Just as with legislators faced with the demands of "special interest groups seeking favored treatment while masquerading as proponents of the public weal," so too it can be said that "full realization of the American ideal of government * * * depends to no small extent" on the ability of the general electorate "to properly evaluate such pressures." *United States* v. *Harriss,* 347 U. S. 612, 625.

Moreover, when the prerogative of choice shifts from individual members or stockholders to the artificial entity, so do the reciprocal obligations of the political candidate in many cases. The tendency to attach strings to such political support and to demand prior commitments of the favored candidates is vastly increased where the union or corporation can obtain political proxies of its membership and, without the necessity of a referendum, speak on most issues as a

[24] "And when we reflect that Congress is here dealing with elections at which Representatives in Congress are being voted for; that an election is intended to be the free and untrammeled choice of the electors; that any interference with the right of the elector to make up his mind how he will vote is as much an interference with his right to vote as if prevented from depositing his ballot; that the concerted use of money is one of the many dangerous agencies in corrupting the elector and debauching the election; that any law the purpose of which is to enable a free and intelligent choice, and an untrammeled expression of that choice in the ballot box, is a regulation of the manner of holding the election—the power of Congress to prohibit corporations of the state from making money contributions in connection with any such election appears to follow as a natural and necessary consequence."

single voice for all its members or stockholders. Regardless of whether this almost inevitable synchronization of political goals between the artificial entity and its sponsored candidate could be deemed "corrupt" in the strictest sense, it clearly can be thought to deprive the elective process of that individualism which is a necessity of democratic government.[25] It

[25] Other provisions of the Federal Corrupt Practices Act also evidence Congressional recognition that the elective process may be corrupted short of outright bribery. See *Burroughs and Cannon* v. *United States*, 290 U. S. 534. The Act requires every political committee to have a chairman and a treasurer who shall keep an account of all contributions and expenditures (2 U. S. C. 242) and shall report such data to the Clerk of the House of Representatives at stated times (2 U. S. C. 244). Anyone else who makes an expenditure aggregating more than fifty dollars within a calendar year for the purpose of influencing an election in two or more States is similarly required to report it to the Clerk of the House of Representatives (2 U. S. C. 245). Political candidates are also required to make statements to the Clerk of the House of Representatives concerning contributions and expenditures, the names of the persons involved, and any promises or pledges made by him relative to appointments either to public or private employment together with an identification of such person (2 U. S. C. 246). Finally, the Act limits to a definite sum the amount of expenditures which may be incurred by such candidate (2 U. S. C. 248). Other legislative provisions now contained in the Criminal Code limit individual contributions to candidates to $5,000 during any calendar year, and prohibit even indirect benefits to such candidates through purchasing goods, commodities, advertising, or articles of any kind which would inure to the candidate's benefit, except in connection with "the usual and known business, trade, or profession of any candidate" (18 U. S. C. 608). No political committee is allowed to "receive contributions aggregating more than $3,000,000, or make expenditures aggregating more than $3,000,000 during any calendar year" (18 U. S. C. 609).

too is an evil to which Congress responded in enacting Section 610.

2. *"Minority protection"*

Congress was also concerned with the rights of dissident union members who were being forced by virtue of their membership to support political causes to which they did not subscribe. In fact, as Mr. Justice Rutledge's concurring opinion in the *C. I. O.* case (335 U. S. at 135) points out, the "minority protection" objective of the statute was the "central theme" of the legislative debates. This Congressional concern is not without substantial basis.

A union functions primarily "to give laborers opportunity to deal on an equality with their employer" (*N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33), not as a political club to influence the general public. The political club is a voluntary organization, openly partisan, and has no power of coercing its membership to subscribe to its group policy by jeopardizing their employment status. One may withdraw at will and thereby signify his disapproval of group policy. On the other hand, at least under the union-shop system, union membership is mandatory and a dissident must forego his employment if he refuses to pay dues because of his objections to political expenditures by the union. Cf. *DeMille* v. *American Federation of Radio Artists, supra,* 187 Pac. 2d at 772. It is of course true that a union member surrenders his right to independent action to the union majority in many ways relative to his employment relationship. He has not, how-

ever, either by joining the union or by paying dues into its treasury, assigned away the right to act for himself in political matters. Compare *DeMille* v. *American Federation of Radio Artists, supra,* 187 Pac. 2d at 774–775, with *Amalgamated Society of Railway Servants* v. *Osborne* (1910), A. C. 87, 115.

Yet, without the protection of Section 610, a union member can be compelled to help subsidize the active electioneering of a candidate whom the union member heartily opposes. Nor is the problem only one of the integrity of personal convictions; it also has its practical aspects. To many a union member, for example, the amount of an assessment imposed on him for political purposes might well represent the total portion of his income which he can afford to expend on the particular political campaign. These members would be effectively precluded from giving any financial support, direct or indirect, to a candidate lacking the official labor stamp of approval. It was the desire to prevent such practices—forcing dissident minorities to support candidates they oppose, while at the same time impairing their financial capacity to support candidates they favor—that in large measure led to enactment of the "expenditure" provision. In interpreting the Railway Labor Act and the Labor Management Relations Act, this Court has recognized an enforceable obligation on the part of a union to safeguard without discrimination the economic interests of all members of the craft represented by the union. *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192; *Tunstall* v. *Brotherhood of Locomotive Firemen*, 323 U. S. 210; *Graham* v. *Brotherhood of*

Locomotive Firemen, 338 U. S. 232; *Railroad Trainmen* v. *Howard,* 343 U. S. 768; *Syres* v. *Oil Workers,* 350 U. S. 892. Surely, the political rights of union minorities are no less entitled to statutory protection.

Indeed, the rights of minorities under somewhat similar circumstances have even received constitutional protection. Thus, in *Board of Education* v. *Barnette,* 319 U. S. 624, it was held that requiring children in public schools to engage in a flag-salute ceremony—"a ceremony so touching matters of opinion and political attitude" (*id.* at 636)—violates the First and Fourteenth Amendments. We express no view as to the applicability of the *Barnette* holding to the use of general union funds for electioneering purposes.[26] Obviously there are a number of significant differences, including differences as to the

[26] Only recently, in *Railway Employees' Department* v. *Hanson,* 351 U. S. 225, it was contended that a Railway Labor Act amendment permitting "union shop" agreements in the industries covered by the Act was unconstitutional on the ground, among others, that general union funds might be used for political purposes in conflict with the political convictions of a union minority. The Court, in upholding the amendment, found it unnecessary to pass on this contention (*id.* at 238): "It is argued that compulsory membership will be used to impair freedom of expression. But that problem is not presented by this record. * * * If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case. * * *" To the extent that Section 610 prevents union expenditures for active electioneering, the question thus reserved in the *Hanson* case is avoided.

"governmental action" involved. Compare *Railway Employees Department* v. *Hanson*, 351 U. S. 225, 232; *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, 198–199. On the other hand, from the standpoint of the individual affected, being compelled to help subsidize a campaign which violates his political convictions may well be as repugnant as being compelled to undergo a ceremony which violates his religious convictions. Regardless of whether the First Amendment forbids such compulsion of union minorities, Congress plainly could take cognizance of the problem and attempt to work out a solution. Confronted with an attempt by a "private" group to frustrate the right of political expression, Congress is not required to stand idly by. Cf. *Terry* v. *Adams*, 345 U. S. 461.

The solution which it adopted is, ironically enough, now attacked under the First Amendment on the ground that it interferes with the expression of bloc sentiment. The First Amendment, traditionally a refuge for the dissident minority against the dominant majority, is now invoked on behalf of the dominant majority against the dissident minority. It is suggested that majority rule must prevail in this area just as it does in so many other aspects of our national life.[27] There is no basis for assuming, however, that clear-cut political choices are invariably or even frequently offered to the constituent membership of

[27] See Chang, *Labor Political Action and the Taft-Hartley Act*, 33 Neb. L. R. 554, 568–569; Tanenhaus, *Organized Labor's Political Spending: The Law and Its Consequences*, 16 Journ. of Pol. 441, 368–469.

the local unions which they may accept or reject according to majority rule. As we have shown, the increasing centralization of union strength into a national hierarchy has rendered local unions even less autonomous in that respect, and admittedly political as well as other policy decisions are commonly made at the regional or national level without any referendum, particularly in regard to the use of funds in national elections. See pp. 39–48, *supra*. If unions were allowed to use treasury funds for electioneering purposes, it is highly doubtful that the union member would be given any meaningful choice in their ultimate disposition.

Moreover, even assuming *arguendo* that the official labor position on any given issue does reflect the will of the majority, we know of no principle of constitutional law which gives absolute protection to the power of an artificial entity—created primarily for the purpose of protecting the employee's rights as an employee, and not for partisan purposes—to pool the political thoughts of its membership and to present only one viewpoint in campaigning for a particular candidate. Particularly is this so where, as here, membership in the group is frequently mandatory and there plainly is no voluntary surrender by individual members of their right to act for themselves in political matters. Only through a holding that the dominant faction is entitled, under the First Amendment, to the financial support of the minority can the constitutional objection to Section 610 be sustained. But "coercive elimination of dissent" is the very

antithesis of the "freedom to differ" which the First Amendment was designed to protect (*West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, 641, 642). The Amendment rests on the premise "that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press* v. *United States,* 326 U. S. 1, 20. It provides no authority to enforce compliance in political activities on an unwilling minority.

The need of a legal limitation on the use of general union funds to promote a union political orthodoxy has been recognized by Great Britain, New South Wales, and Western Australia. Those governments have at various times required that political expenditures be made from separate funds, that contributions cannot be made a condition of employment, and that those who cannot subscribe to the purpose of the expenditure may abstain from contributing without losing any benefits or being placed under any liability.[28] Placing the political activities of unionists on a voluntary basis achieves the same result. In addition, it renders the political committees which expend the funds directly accountable to the individual unionist, who may at any time register his disapproval by refusing to make a further contribution. Under this

[28] See Foenander, *Trade Union Rules and the "Political Levy"—Australia,* Vol. X, No. 1 (1953), Univ. of Toronto L. J., pp. 73–82; *Amalgamated Society of Railway Servants* v. *Osborne* (1910), A. C. 87; *Ironworkers Case,* 61 Commonwealth Arbitration Reports 726 (1948).

system, there is no "captive audience" of dissenters who are forced to aid political campaigning to which they cannot subscribe.

It may be conceded that a labor union, in the interest of the economic function for which it was primarily organized, has a legitimate interest in political affairs and therefore a right as an entity to present its views.[29] As we have shown (*supra*, pp. 37–51), however, the statute as construed in the *C. I. O.* case leaves ample opportunity for the expression of this collective point of view. All sorts of union political activities remain outside the coverage of the statute. Even partisan statements of the union's position on particular candidates in an election can be, and are, effectively presented in union newspapers. All that the statute prohibits is the use of general funds of the union, representing the contributions of what may be a substantial minority, from being used for active public electioneering on behalf of a particular candidate.

C. THE STATUTE IS AN APPROPRIATE EXERCISE OF THE CONGRESSIONAL POWER TO REGULATE THE CONDUCT OF FEDERAL ELECTIONS

These considerations which led Congress to enact Section 610—the manipulation of the elective process in a manner inconsistent with the principles of democratic control, and the use of general funds to support ideas and candidates opposed by a substantial minority—are even more cogent today. The consolidation of

[29] See, *e. g.*, Chang, *Labor Political Action and the Taft-Hartley Act*, 33 Neb. L. R. 554.

unions comprising a membership of approximately fifteen million workers into the AFL-CIO organization has brought with it a commensurate consolidation of political committees and a greatly increased spending power to speak for American labor in political matters.[30] This development adds further support to the judgment of Congress that a limitation should be placed on the spending power of artificial entities, unions and corporations alike, in connection with federal elections.

In the light of the objectives Congress sought to achieve, and measured against the public interest involved, Section 610 is not an invalid restraint on group political expression within the condemnation of the First Amendment. Even the political activities of individuals, in whom rests the ultimate sovereignty of the nation, have to some extent been limited in connection with elections and other governmental processes. Thus in *United Public Workers* v. *Mitchell,* 330 U. S. 75, this Court sustained the power in Congress to make it unlawful for any person employed in the executive branch of the federal government to "take any active part in political management or in political campaigns." It had previously recognized the necessity of limiting the political activities of public office holders to preserve the purity of the electoral process. *United States* v. *Wurzbach,* 280 U. S. 396; *Ex parte Curtis,* 106 U. S. 371. More recently,

[30] The Secretary-Treasurer of COPE, William F. Schnitzler, recently told a regional conference of COPE (AFL-CIO News, Vol. 1, No. 19, p. 5, April 14, 1956: "When COPE talks, it talks for labor in political matters."

in *United States* v. *Harriss,* 347 U. S. 612, the Court sustained the constitutionality of the Federal Lobbying Act against a challenge based on First Amendment grounds, noting that Congress had "acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act—to maintain the integrity of a basic governmental process." *Id.* at 625.

Under these decisions, the constitutionality of Section 610 would appear clear. The ends Congress has sought to attain are all legitimate and significant; on the other hand, the restrictions imposed are neither too drastic nor inappropriate, and almost a decade of experience has proved that union participation in politics, far from being destroyed, has continued to flourish. Certainly, unions and corporations enjoy no First Amendment status superior to the rights of the individuals who compose the group. *United States* v. *White,* 322 U. S. 694; *Joint Anti-Fascist Committee* v. *McGrath,* 341 U. S. 123, 184 (concurring opinion of Mr. Justice Jackson); *United States* v. *Morton Salt Co.,* 338 U. S. 632. Moreover, as already pointed out, Section 610 operates to protect union members and corporate stockholders from group regimentation in political matters. In this respect, the statute furthers, rather than frustrates, the purpose of the First Amendment. If it were true that "private" groups enjoy a constitutional immunity in interfering with the exercise of free speech by their members, these individual rights could well be rendered illusory. Cf. *Terry* v. *Adams, supra.*

The implications, as we see them, of a holding of unconstitutionality in this case should be clearly stated. In the constitutional hierarchy of values, there appears to us to be no rational distinction for First Amendment purposes between unions and corporations.[21] Thus, if Congress cannot constitutionally prohibit the use of general union funds for active electioneering on behalf of particular candidates, it would follow (even apart from the problem of severability) that the ban on similar expenditures by corporations would likewise be invalid. The result, for all practical purposes, would be to nullify the ban on "contributions" by both unions and corporations; for, as the legislative history of Section 610 makes clear, regulation of direct subsidies to candidates is of little avail if it can be avoided by the simple expedient of paying the expenses of the candidates' campaigns. Such a result, we believe, is not required by the Constitution. Congress is not so impotent that it cannot place reasonable limitations on the power of artificial entities, unions and corporations alike,

[21] Whether an organization is a corporation or an association, it is capable of exerting undue influence in the electoral system, is comprised of individual members whose several and joint interests must be protected, and is primarily concerned with its business interests, although each claims that the attainment of those economic goals compels it to engage in political activities to maintain its own interests. In all respects relevant to this case, therefore, the two organizational forms are on a parity; the legal differences are irrelevant. Cf. *Amalgamated Society of Railway Servants* v. *Osborne* (1910), A. C. 87, 104–105. And see Tanenhaus, *Organized Labor's Political Spending*, *supra*.

to substitute money for the expression of popular will in federal elections.

The statute, in what we conceive to be its proper coverage, does not unduly limit the entity from expressing its views when it prohibits the use of general funds for active political electioneering. Rather, it leaves sufficient scope for expression of the viewpoint which may legitimately be said to be that of the entity as such, while at the same time it secures the freedom of dissent for the individual member or stockholder in what is the essentially personal right of actively supporting a particular candidate in an election. Congress, in the interest of preserving the purity of elections and the guarantee of individual expression, has acted within its constitutional limitations.

CONCLUSION

For the reasons stated, the judgment of the court below should be reversed and the cause should be remanded to the district court for trial.

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